

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

XUE BAO CHEN,

Petitioner,

vs.

WARDEN NEVEN, et al.,

Respondents.

Case No. 2:12-cv-02162-JAD-NJK

**O R D E R**

Before the court are multiple motions, including petitioner's motion for appointment of counsel (Dkt. #18) and petitioner's application to proceed *in forma pauperis* (Dkt. #19). Whenever the court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). "[T]he district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas proceedings. *McCleskey v. Zant*, 499 U.S. 467, 495 (1991). The factors to consider are not separate from the underlying claims; rather, they are intrinsically enmeshed with them. *Weygandt*, 718 F.2d at 954.

**1. Appointment of Counsel.**

The court denied petitioner's earlier application to proceed *in forma pauperis* (Dkt. #1), but that was only in the context of the small filing fee for a habeas corpus petition. Order (Dkt. #3). The information contained in the current application (Dkt. #19) demonstrates that petitioner is

1 unable to afford counsel. Petitioner's allegations in the petition (Dkt. #10) show that his  
2 understanding of English is limited, at best. Indeed, in state-court proceedings, petitioner was  
3 furnished with an interpreter. *See, e.g.*, Ex. 90 (Dkt. #24) (transcript of trial). Under the  
4 circumstances, appointment of counsel is warranted.

5 **2. Remaining Motions Denied as Moot.**

6 Also before the court are respondents' motion to dismiss (Dkt. #20), petitioner's motion for  
7 extension of time to respond to the motion to dismiss (Dkt. #29), petitioner's motion for a status  
8 check (Dkt. #30), petitioner's motion to take judicial notice (#34), and respondents' motion for  
9 enlargement of time (first request) (Dkt. #36). Appointed counsel likely will want to file an  
10 amended petition for a writ of habeas corpus. Consequently, these five motions shall be **DENIED**  
11 as moot. Respondents may renew their motion to dismiss if petitioner does not file an amended  
12 petition.

13 **IT IS THEREFORE ORDERED** that the application to proceed *in forma pauperis* (Dkt.  
14 #19) is **GRANTED**. Petitioner need not pay any further filing fees in this action.

15 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (Dkt.  
16 #18) is **GRANTED**. **The Federal Public Defender is provisionally appointed to represent**  
17 **petitioner.**

18 **IT IS FURTHER ORDERED** that the Federal Public Defender shall have **thirty (30) days**  
19 from the date that this order is entered to undertake direct representation of petitioner or to indicate  
20 to the court his inability to represent petitioner in these proceedings. If the Federal Public Defender  
21 does undertake representation of petitioner, he shall then have **sixty (60) days** to file an amended  
22 petition for a writ of habeas corpus. If the Federal Public Defender is unable to represent petitioner,  
23 then the court will appoint alternate counsel.


24 **IT IS FURTHER ORDERED** that the clerk shall electronically serve the Federal Public  
25 Defender with a copy of the petition (Dkt. #10) and a copy of this Order.

26 **IT IS FURTHER ORDERED** that any exhibits filed by the parties shall be filed with a  
27 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF attachments  
28 that are filed further shall be identified by the number or numbers (or letter or letters) of the exhibits

1 in the attachment. The hard copy of any additional state court record exhibits shall be  
2 forwarded—for this case—to the staff attorneys in Las Vegas.

3 **IT IS FURTHER ORDERED** that respondents' motion to dismiss (**Dkt. #20**), petitioner's  
4 motion for extension of time to respond to the motion to dismiss (**Dkt. #29**), petitioner's motion for  
5 a status check (**Dkt. #30**), petitioner's motion to take judicial notice (**Dkt. #34**), and respondents'  
6 motion for enlargement of time (first request) (**Dkt. #36**) are **DENIED** as moot.

7 DATED: October 15, 2013.

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11 JENNIFER A. DORSEY  
12 United States District Judge  
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